

**VICKY WOODS**

VS.

Respondent

AND

Insurance Carrier

- (1) Did claimant sustain personal injury by accident which arose out of and in the course of her employment with respondent?
- (2) What is the date of accident?
- (3) Did claimant provide respondent with timely notice of accident?

- (4) When requesting review of a preliminary hearing order, is it required to include in the application for review language that the Administrative Law Judge exceeded his or her jurisdiction?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

(1) Claimant developed bilateral upper extremity injuries because of the work she performed for the respondent between July 16, 1997, and August 29, 1997. Claimant's job as a certified nurses aide required daily, repetitive use of her hands and arms.

(2),(3) Claimant's symptoms began in August 1997 after she began working in respondent's Alzheimer's Unit. Claimant was not aware of any specific, traumatic event which might have caused the soreness which she began to experience. She did not realize she had sustained injury and believed her soreness would resolve as she became accustomed to the physical nature of her job.

Claimant continued to work for the respondent through August 29, 1997, when she left work because of difficulty breathing. Claimant first learned she had sustained injury to her upper extremities after consulting with her family physician on September 26, 1997. Claimant presented respondent with written claim for workers compensation benefits on October 8, 1997.

Based upon the present evidentiary record, the Appeals Board finds claimant timely notified respondent of her work-related injury. Because claimant was not aware until September 26, 1997, that she had possibly sustained a work-related injury, the Appeals Board finds just cause existed to extend the 10-day notice requirement to 75 days. See K.S.A. 44-520. The Appeals Board finds claimant sustained accidental injury to her upper extremities through her last day of work on August 29, 1997, and that notice of accident was given respondent on October 8, 1997, well within 75 days from the date of accident.

(4) Because the respondent's application for review did not contain language that the Administrative Law Judge exceeded his jurisdiction and authority, claimant contends such omission is fatal and, therefore, respondent's application for review did not confer jurisdiction upon the Appeals Board to review this preliminary hearing decision. The Appeals Board disagrees.

Before 1993, the general rule was that preliminary hearing decisions were not appealable. See K.S.A. 1992 Supp. 44-534a. However, the director could review a preliminary hearing decision when the administrative law judge exceeded his or her jurisdiction. See K.S.A. 1992 Supp. 44-551(b)(2)(A). In 1993, K.S.A. 44-534a was

amended and now provides that the following preliminary hearing findings are subject to Appeals Board review:

- (1) Whether the worker suffered an accidental injury.
- (2) Whether the injury arose out of and in the course of worker's employment.
- (3) Whether notice and claim were timely made.
- (4) Whether certain defenses apply.

The Appeals Board finds those enumerated issues are subject to Appeals Board review in all events whether or not it is alleged that an administrative law judge has exceeded his or her jurisdiction and authority. Therefore, the omission of the language in question is not fatal to respondent's application for review.

As the issue is not now before us, no opinion is given or intended whether such omission would be fatal in other circumstances where the issue in dispute is not one of those preliminary hearing findings specifically enumerated in K.S.A. 1997 Supp. 44-534a, as amended.

Based upon the above, the preliminary hearing Order granting claimant medical benefits should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated December 2, 1997, entered by Administrative Law Judge Jon L. Frobish is affirmed to the extent it grants claimant medical benefits but modified to the extent it found September 24, 1997, as the date of accident.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1998.

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BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS  
Gary A. Winfrey, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director